

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

STEPHEN GILL and MICHELLE GILL,
husband and wife,

Plaintiffs,

vs.

CASE NO.: 05-cv-10309-MLW

UNITED STATES OF AMERICA,

Defendant.

**PLAINTIFFS' ASSENTED TO MOTION TO EXTEND TIME BY THIRTY (30) DAYS
TO FILE THEIR OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR STAY
(WITH INCORPORATED MEMORANDUM OF LAW)**

Plaintiff STEPHEN GILL and Plaintiff MICHELLE GILL, husband and wife
(collectively, "Plaintiffs"), by and through their undersigned counsel, and pursuant to Fed.R.Civ.
P. 6(b) and LR, D.Mass.7.1(A), hereby move with the assent of Defendant UNITED STATES
OF AMERICA ("Defendant") for an extension of time, to an including July 5, 2005,¹ within
which to file and serve Plaintiffs' Opposition to Defendant's Motion to Dismiss or Stay, and as
reason therefor states as follows:

FACTS AND PROCEDURAL HISTORY

1. This is Plaintiffs' first request for an extension.
2. By this Court's (Wolf, J.) electronic Order of April 18, 2005, this Court previously
granted Defendant's Assented to Motion to Extend Time to Answer or Otherwise Respond to
Complaint [Dkt.#4], thereby permitting Defendant an additional 30 days to file and serve
Defendant's Motion to Dismiss or Stay. [See Clerk's unnumbered docket entry of 4/18/05].

¹As the 30th day falls on Independence Day weekend, the requested due date necessarily
must be pushed forward a couple of days to Tuesday, July 5, 2005, pursuant to Fed.R.Civ.P 6(a).

3. Plaintiffs' undersigned notice counsel states that Plaintiffs' lead counsel, Kristen Materne, is charged with filing Plaintiffs' forthcoming Opposition to Defendant's Motion to Dismiss or Stay, but Ms. Materne has been and presently is on bed rest following her recent caesarian section attendant to the birth of her new baby.

4. Further, Plaintiffs' undersigned notice counsel states that the issues raised by Defendant's Motion to Dismiss or Stay are complicated and require some additional time to adequately respond to the same.

5. Plaintiffs' undersigned notice counsel states that his other co-counsel, Timothy Morgan, is not admitted to practice before this Court and that, to date, no motion for his appearance *pro hac vice* has been submitted to this Court. Accordingly, Mr. Morgan is not able to file Plaintiffs' forthcoming Opposition to Defendant's Motion to Dismiss or Stay.

6. Finally, Plaintiffs' undersigned notice counsel states that Mr. Morgan has conferred with Defendant's counsel, AUSA Eugenia Carris, and she has assented to this motion for 30-day extension of time for Plaintiffs to file and serve their Opposition to Defendant's Motion to Dismiss or Stay.

WHEREFORE, Plaintiff STEPHEN GILL and Plaintiff MICHELLE GILL, husband and wife, respectfully request that the Court allow the instant assented to motion for 30-day extension of time for the Plaintiffs to file and serve their Opposition to Defendant's Motion to Dismiss or Stay.

Local Rule 7.1(A) Certification Required

Pursuant to LR, D.Mass. 7.1(A), Plaintiffs' undersigned notice counsel states that his co-counsel, Timothy Morgan, conferred with Defendant's counsel, AUSA Eugenia Carris, on May 31, 2005, and she has assented to Plaintiffs' instant motion.

INCORPORATED MEMORANDUM OF LAW

The granting of a motion for enlargement of time is within the Court's sound discretion. Moldanado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 583 (1st Cir.1994). Specifically, Fed.R. Civ.P. 6(b) expressly confers such discretion and provides a mechanism to invoke that discretion for cause shown. Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 896 (1990). To be sure, Rule 6(b) in part provides:

When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order, or (2) upon motion made after expiration of the specified period permit the act to be done where failure to act was the result of excusable neglect....

Further, liberal extensions should be permitted under Rule 6(b). Arroyo v. Wheat, 102 F.R.D. 516, 518 (D.C. Nev. 1984). As set forth above, Plaintiffs have shown good cause for this Court to grant their instant assented to motion for extension of time by a period of 30 days.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant their instant assented to motion for 30-day extension of time, to and including July 5, 2005,² to file and serve their Opposition to Defendant's Motion to Dismiss or Stay.

²See n.1, *supra*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this, the 31st day of May, 2005, I electronically filed the within document with the Clerk of Court by using its CM/ECF system which, in turn, will electronically transmit notice of the same to the following: AUSA Eugenia M. Carris, United States Attorney's Office , 1 Courthouse Way, Suite 9200, Boston, MA 02210; and Kristen Materne, Esq., 33 College Hill Road, Suite 15G, Warwick, RI 02886. I further certify that a true and correct copy of the foregoing was sent this same day by U.S. Mail to said person(s).

STEPHEN D. GILL

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E-mail: sgill@flalawyer.net

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